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CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

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Court:

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Received Date: 3/15/2013

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9 Attorneys for Plaintiff
10 CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
14 501(c)(3) non-profit, public benefit
15 Corporation,

16 Plaintiff,

17 v.

18 COUNTY OF MENDOCINO,

19 Defendant.
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CASE NO. 3:13-cv-01087 NC

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENPD
ENVIRONMENTAL PROTECTION
DIVISION

1
2 CERTIFICATE OF SERVICE

3 I am employed in the County of Sonoma, State of California. I am over the age of
4 eighteen years and not a party to the within action. My business address is P.O. Box 14426,
5 Santa Rosa, CA 95402. On the date set forth below, I served the following described
6 document(s):

7 **COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL
8 PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean
9 Water Act 33 U.S.C. § 1251, *et seq*)**

10 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

11 Citizen Suit Coordinator
12 U.S. Dept. of Justice
13 Environmental & Natural Resource Division
14 Law and Policy Section
15 P.O. Box 7415
16 Ben Franklin Station
17 Washington, DC 20044-7415

18 Administrator
19 U.S. Environmental Protection Agency
20 Ariel Rios Building
21 1200 Pennsylvania Avenue, N.W.
22 Washington, D.C. 20460

23 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class
24 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.
25 I am readily familiar with the practices of Law Office of Jack Silver for processing of
26 correspondence; said practice being that in the ordinary course of business, correspondence is
27 deposited with the United States Postal Service the same day as it is placed for processing.

28 [] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile
machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct, and that this declaration was executed on March 11, 2013 at Santa
Rosa, California.

Wojciech P. Makowski
Wojciech P. Makowski

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5 Attorney for Plaintiff
6 CALIFORNIA RIVER WATCH

FILED
MAR 08 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

NC

10 CALIFORNIA RIVER WATCH,
11 a 501(c)(3) non profit, public benefit
Corporation,

12 Plaintiff,

13 v.

14 COUNTY OF MENDOCINO,

15 Defendant.
16

CASE NO. 13 1087
**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, RESTITUTION
AND REMEDIATION**
**(Environmental - Clean Water Act
33 U.S.C. § 1251, et seq)**

17 NOW COMES Plaintiff California River Watch, by and through its counsel, and for its
18 Complaint against Defendant County of Mendocino, states as follows:

19 **I. NATURE OF THE CASE**

20 1. This is a citizen's suit brought under the Clean Water Act ("CWA" or "Act"), 33
21 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. § 1311, 33 U.S.C. § 1342, and 33 U.S.C. § 1365,
22 to stop Defendant from repeated and ongoing violations of the CWA. These violations are
23 detailed in the January 3, 2013 Notice of Violations and Intent to File Suit made part of the
24 pleadings of this case and attached hereto as **EXHIBIT A**. Plaintiff contends Defendant is not
25 in compliance with the National Pollutant Discharge Elimination System ("NPDES") permitting
26 requirements for municipal stormwater dischargers in violation of 33 U.S.C. § 1342(p).

27 2. CWA §402(p), 33 U.S.C. §1342(p), requires municipal stormwater dischargers to
28 obtain and comply with a NPDES permit. This includes "effectively prohibiting non-stormwater

Complaint

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1 discharges into the storm sewers” and “requiring controls to reduce the discharge of pollutants
 2 to the maximum extent practicable, including management practices, control techniques and
 3 system, design and engineering methods, and such other provisions as the Administrator or the
 4 State determines appropriate for the control of such pollutants.” 33 U.S.C. §1342(p)(3)(B).

5 3. Plaintiff seeks declaratory relief and injunctive relief to prohibit future violations and
 6 other injunctive relief for Defendant’s violations of the CWA as alleged herein.

7 II. PARTIES

8 4. Plaintiff CALIFORNIA RIVER WATCH (“CRW”) is a 501(c)(3) non profit, public
 9 benefit corporation organized under the laws of the State of California, and dedicated to protect,
 10 enhance and help restore the surface waters and ground waters of the State of California,
 11 including all rivers, creek, streams, wetlands, vernal pools and tributaries. Plaintiff’s office is
 12 located at 290 S. Main Street, #817, Sebastopol, California.

13 5. Defendant COUNTY OF MENDOCINO (the “COUNTY”) is a local government
 14 located in Northern California with offices located at 501 Low Gap Road, Ukiah, California.
 15 The COUNTY is, and at all times relevant to this Complaint was, the owner and operator of the
 16 Mendocino County stormwater system which is the subject of these proceedings.

17 III. JURISDICTIONAL ALLEGATIONS

18 6. Subject matter jurisdiction is conferred upon this Court by CWA §505(a)(1), 33
 19 U.S.C. § 1365(a)(1) which states, in relevant part,

20 “any citizen may commence a civil action on his own behalf against any person
 21 (including . . . any other governmental instrumentality or agency) who is alleged
 22 to be in violation of (A) an effluent standard or limitation under this chapter or
 23 (B) an order issued by the Administrator or State with respect to such standard
 24 or limitation.” For purposes of CWA §505, “the term ‘citizen’ means a person
 25 or persons having an interest which is or may be adversely affected.”

26 7. Members of CRW reside in the vicinity of, derive livelihoods from, own property in,
 27 and/or recreate on, in or near, or otherwise enjoy and benefit from the watersheds, land, rivers,
 28 and associated natural resources near which the COUNTY’s operations take place. The health,

1 economic, recreational, aesthetic, and environmental interests of CRW and its members have
2 been, are being, and will continue to be adversely affected by the COUNTY's unlawful
3 violations as alleged herein. CRW contends there exists an injury in fact to its members,
4 causation of that injury by the COUNTY's complained of conduct, and a likelihood the
5 requested relief will redress that injury.

6 8. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1265(b)(1)(A), CRW gave statutory
7 notice of the CWA violations alleged in this Complaint to: (a) the COUNTY, (b) the United
8 States Environmental Protection Agency ("EPA,") both Federal and Regional, and (c) the State
9 of California Water Resources Control Board (see EXHIBIT A).

10 9. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as
11 the COUNTY and the facilities for stormwater collection under the COUNTY's operation and
12 control are located within this District.

13 IV. STATEMENT OF FACTS

14 10. The CWA regulates the discharge of pollutants into navigable waters. The statute
15 is structured in such a way that all discharges of pollutants are prohibited with the exception of
16 several enumerated statutory exceptions. One such exception authorizes a municipal discharger
17 to acquire a system or jurisdiction-wide permit that effectively prohibits non-stormwater
18 discharges into the stormwater and requires controls to reduce the discharge of pollutants to the
19 maximum extent practicable, including management practices, control techniques and system,
20 design and engineering methods, and such other provisions as the Administrator or the State
21 determines appropriate for the control of such pollutants. Non-compliance with such a permit
22 is unlawful under the CWA.

23 11. The COUNTY is a municipal discharger and as such must operate under a municipal
24 stormwater permit. CWA §402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating
25 storm water discharges under the NPDES permitting program. Section 402(p) authorizes the
26 regulation of stormwater discharges through permits issued to dischargers and/or through the
27 issuance of a single, statewide general permit applicable to all municipal, storm water
28 dischargers. Pursuant to this section of the Act, the Administrator of the United States EPA has

1 authorized California's State Water Resources Control Board ("SWRCB") to issue NPDES
2 permits including general NPDES permits in California.

3 12. The SWRCB elected to issue a statewide general permit for municipal dischargers,
4 titled *NPDES General Permit No. CAS000004, Water Quality Order No. 2003-005-DW, Waste*
5 *Discharge Requirements (WDRs) for Stormwater Discharges from Small Municipal Separate*
6 *Storm Sewer Systems* ("General Permit"). The COUNTY was notified of its obligation to comply
7 with the General Permit in 2003. Per the General Permit, the COUNTY is required to develop
8 and implement a Storm Water Management Plan ("SWMP"). The County completed and
9 adopted its Second Revised SWMP on September 6, 2005.

10 13. The SWMP regulations require the COUNTY to develop six (6) minimum control
11 measures utilizing appropriate best management practices ("BMPs"), to develop measurable
12 goals for the SWMP, and to evaluate the effectiveness of the SWMP through the submission of
13 an Annual Report. The six BMPs are (1) Public Education and Outreach; (2) Public
14 Participation/Involvement; (3) Illicit Discharge Detection and Elimination; (4) Construction Site
15 Runoff Control; (5) Post-Construction Runoff Control; and, (6) Pollution Prevention/Good
16 Housekeeping.

17 14. CRW contends the COUNTY is in violation of four (4) of the six (6) BMPs as
18 follows:

19 a. The COUNTY is in violation of the Illicit Discharge Detection and Elimination
20 BMP due to its failure to complete a map of all outfalls, identifying the names of
21 all waters of the United States that receive discharges from those outfalls, and by
22 failing to annually inspect its storm drain system;

23 b. The COUNTY has yet to develop or implement procedures for construction site
24 plan review and procedures for inspection and enforcement of control measures,
25 in violation of the Construction Site Stormwater Runoff Control BMP;

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- 1 c. The COUNTY is in violation of the Post-Construction Runoff Control BMP by
2 failing to develop, implement, and enforce a program to address stormwater runoff
3 from new development and redevelopment, as well as failing to provide a process
4 to ensure long-term operation and maintenance of these BMPs; and,
5 d. The COUNTY has failed to create policies and procedures for maintenance of its
6 facilities, vehicles, and equipment, and has failed to conduct annual sweeping of
7 County-managed paved parking and operating areas in violation of the Pollution
8 Prevention/Good Housekeeping BMP.

9 15. Currently, all major water bodies in Mendocino County are listed as impaired on the
10 State of California's 303(d) List of Water Quality Limited Segments. The portion of the Russian
11 River located in Mendocino County is habitat for Coho Salmon and Steelhead Trout, both of
12 which are listed as threatened under the ESA; and, is listed as impaired as a result of
13 sedimentation/siltation and temperature. Sedimentation/Siltation is caused in part by agriculture,
14 bridge construction, channel erosion, construction/land development, erosion/siltation, habitat
15 modification, and stream bank modification/destabilization. Increased temperatures in the
16 Russian River may be a source of impairment for these cold water fisheries. Increased
17 temperatures result from non-point source runoff, regulation/modification, habitat modification
18 and stream bank modification/destabilization.

19 16. CRW alleges that the COUNTY's violations of the General Permit and its failure
20 to complete an adequate SWMP threaten the beneficial uses of the Russian River and its
21 tributaries. According to the North Coast Basin Plan, completed by the North Coast Regional
22 Water Quality Control Board, beneficial uses of the Upper Russian River basin include
23 municipal and domestic supply, agricultural supply, groundwater recharge, freshwater
24 replenishment, water contact recreation, commercial and sport fishing, warm and fresh water
25 habitat, wildlife habitat, and habitat for rare, threatened, and endangered species.

26 17. CRW alleges that the current deficiencies in the COUNTY's implementation of the
27 General Permit and SWMP can cause further impairment of the Russian River for both
28 sedimentation/siltation and increased temperatures, and are alleged to have further degraded the

1 Russian River. The COUNTY has no current procedures in place for construction site review
 2 and inspection or enforcement of control measures. More strict control over construction and
 3 land development by the COUNTY could decrease the sedimentation/siltation of the Russian
 4 River.

5 **V. CLAIM FOR RELIEF**

6 **Violation of the CWA §402(p), 33 U.S.C. §1342(p)**

7 **Municipal Stormwater Dischargers Must be Regulated under a NPDES Permit**

8 CRW incorporates the allegation set forth in paragraphs 1 through 17 and EXHIBIT A
 9 as though fully set forth herein. CRW is informed and believes, and based on such information
 10 and belief alleges as follows:

11 18. The COUNTY has violated and continues to violate the CWA as evidenced by the
 12 failure to comply with requirements of the General Permit in violation of CWA §402(p).

13 19. The violations of the COUNTY are ongoing and will continue after the filing of this
 14 Complaint. CRW alleges herein all violations of the CWA by the COUNTY which may have
 15 occurred or will occur prior to trial, but for which data may not have been available, submitted,
 16 or apparent from the reports and/or data submitted by the COUNTY to the Regional Water
 17 Quality Control Board or to CRW prior to the filing of this Complaint. CRW will amend this
 18 Complaint as necessary to address the COUNTY's violations which may occur after the filing
 19 of this Complaint. Each violation is a separate violation of the CWA.

20 20. CRW alleges that without the issuance of appropriate equitable relief, the COUNTY
 21 will continue to violate the CWA with respect to the enumerated violations of the General Permit
 22 identified herein and in EXHIBIT A. Further, that the relief requested in this Complaint will
 23 prevent future injury and protect the interests of CRW and its members, which interests are or
 24 may be adversely affected by the COUNTY's violations as alleged herein.

25 **VI. PRAYER FOR RELIEF**

26 WHEREFORE, CRW prays this Court grant the following relief:

27 Declare the COUNTY to have violated or to be in violation of the CWA;

28 Enjoin the COUNTY from continued violations of the CWA;

1 Require the COUNTY to comply with the terms of the General Permit;
2 Order the COUNTY to pay CRW's reasonable attorneys' fees and costs (including expert
3 witness fees), as provided by law; and,
4 Grant any such other equitable or injunctive relief as may be just or proper.

5
6 DATED: March 6, 2013

LAW OFFICE OF JACK SILVER

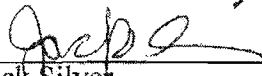
7
8 By: 
9 Jack Silver
10 Attorney for Plaintiff
11 CALIFORNIA RIVER WATCH
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EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Via Certified Mail – Return Receipt Requested

January 3, 2013

Thomas R. Parker, County Counsel
County of Mendocino
501 Low Gap Road, Rm. 1030
Ukiah, CA 95482

Carmel J. Angelo, Chief Executive Officer
Mendocino County Board of Supervisors
501 Low Gap Road, Rm. 1010
Ukiah, CA 95482

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Counsel and Chief Executive Officer:

NOTICE

The Clean Water Act ("CWA" or the "Act") §505(b), 33 U.S.C. §1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA §505(a), 33 U.S.C. §1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the alleged violations occur.

Northern California River Watch ("River Watch") hereby places the County of Mendocino ("County") on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch intends to bring suit in the United States District Court against the County for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA §505(a)(1), 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the North Coast Regional Water Quality Control Board's Water Quality Control Plan ("Basin Plan").

The CWA regulates the discharge of pollutants into navigable waters, including the discharge of pollutants through stormwater. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA §402, 33 U.S.C. §1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards and limitations specified in a National Pollution Discharge Elimination System ("NPDES") Permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. §1311(a), and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. §1365 to enforce effluent standards or limitations, including violations of 33 U.S.C. §1311(a), 33 U.S.C. §1342(p), and 33 U.S.C. §1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the North Coast Regional Water Quality Control Board ("RWQCB").

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified violations of the County's Storm Water Management Program ("SWMP") in violation of the NPDES permit requirements for municipal stormwater discharges - CWA §402(p), 33 U.S.C. §1342(p).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing the violations of the County's SWMP and describing with particularity specific incidents referenced in the RWQCB's public documents relating to the County, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations identified in this Notice is the County of Mendocino and those of its employees responsible for compliance with its SWMP adopted on September 6, 2005.

4. *The location of the alleged violation.*

The location of the various violations are identified in records created and/or maintained by the County and by the RWQCB which relate to the County's SWMP as further described in this Notice.

5. *The date or dates of violation or a reasonable range of dates during which the alleged violation occurred.*

River Watch has examined records maintained by the RWQCB from December 4, 2007 through December 4, 2012. The range of dates covered by this Notice is December 4, 2007 to December 4, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered. Some violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The full name of the person giving notice is Northern California River Watch, referred to in this notice as "River Watch." River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams, and groundwater in Northern California. River Watch is organized under the laws of the State of California, and located in Sebastopol, California. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Law Office of Jack Silver
Jerry Bernhaut, Esq.
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707 528-8175
Fax. 707 528-8675
Email: lhm28843@sbcglobal.net

BACKGROUND AND VIOLATIONS

River Watch alleges the County has violated the CWA, the Basin Plan, and the Code of Federal Regulations by virtue of violations of the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Water Quality Order No. 2003-005-DW, Waste Discharge Requirements (WDRs) for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems* ("General Permit") and the County's SWMP. The violations identified below are supported by the records on file with the RWQCB. It is alleged that these violations are continuing.

The County is a municipal discharger under CWA §402(p) and as such must operate under a municipal stormwater permit - CWA §402(p)(3)(B), 33 U.S.C. §1342(p)(3)(B). The County's operations are located within the watershed basin of the Russian River, a water of the United States. The County provides stormwater management for urbanized, unincorporated areas in Mendocino County. The County was notified of its designation as a Municipal Separate Stormwater Sewer System (MS4) in 2003. Designation as an MS4 required the County to develop and implement a SWMP to reduce the contamination of stormwater runoff and prohibit illicit discharges. The County completed and adopted its Second Revised SWMP on September 6, 2005.

As an MS4, the County is required to comply with the General Permit which "prohibits the discharge of materials other than stormwater that are not 'authorized non-stormwater discharges.'" *SWRCB Water Quality Order NO. 2003-0005-DWQ § D.2.c.* The General Permit also incorporates discharge prohibitions contained in the Basin Plan. In addition, the General Permit requires the County to develop a SWMP which includes six (6) minimum control measures:

- Public Education and Outreach;
- Public Participation/Involvement;
- Illicit Discharge Detection and Elimination;
- Construction Site Runoff Control;
- Post-Construction Runoff Control; and,
- Pollution Prevention/Good Housekeeping.

The County must implement its SWMP using appropriate stormwater management controls, or best management practices ("BMPs"). The County must also develop measurable goals for the SWMP and evaluate the effectiveness of the SWMP through an annual report.

The EPA has published BMPs for the above-defined minimum control measures. The BMP for Public Education and Outreach requires MS4s to inform individual and households as to ways in which to reduce stormwater pollution. The Public Involvement BMP requires MS4s to involve the public in the development, implementation, and review of the SWMP. The Illicit Discharge Detection and Elimination BMP includes identifying and eliminating illicit discharges and spills to storm drain systems. The Construction Site Runoff Control BMP states that MS4s and construction site operators must address stormwater runoff from active construction sites. The Post-Construction Site Runoff Control BMP requires MS4s, developers, and property owners to address stormwater runoff after the completion of construction activities. Lastly, the Pollution Prevention/Good Housekeeping BMP compels MS4s to address stormwater runoff from their own facilities and activities.

River Watch contends the County is in violation of four (4) of the six (6) minimum control measures as follows:

1. The County violated the Illicit Discharge Detection and Elimination Control Measure by failing to complete a map of all outfalls identifying the names of all waters of the United States that receive discharges from those outfalls, and by failing to annually inspect the County storm drain system.
2. The County has yet to develop or implement procedures for construction site plan review, and procedures for inspection and enforcement of control measures, in violation of the Construction Site Stormwater Runoff Control Measure.
3. The County violated the Post-Construction Runoff measure by failing to develop, implement, and enforce a program to address stormwater runoff from new and redevelopment, as well as failing to provide a process to ensure long-term operation and maintenance of BMPs.
4. The County has failed to create policies and procedures for maintenance of County facilities, vehicles, and equipment and has failed to conduct annual sweeping of County-managed, paved parking and operating areas.

The County's violations of the General Permit and its SWMP threaten the beneficial uses of the Russian River and its tributaries. According to the Basin Plan, beneficial uses of the Upper Russian River Basin include municipal and domestic supply; agricultural supply; groundwater recharge; freshwater replenishment; water contact recreation; commercial and sport fishing; warm and cold freshwater habitat; wildlife habitat; and rare, threatened, and endangered species habitat.

Currently, all major waterbodies in the County of Mendocino are listed as impaired on the State of California's 303(d) List of Water Quality Limited Segments. The Mendocino County portion of the Russian River is listed as impaired as a result of sedimentation/siltation and temperature. Sedimentation/Siltation is caused in part by agriculture, bridge construction, channel erosion, construction and land development, erosion/siltation, habitat modification, and stream bank modification/destabilization. Increased temperatures result from flow non-point source runoff, regulation/modification, habitat modification, and stream bank modification/destabilization. The Russian River is habitat for Coho salmon and Steelhead trout, both of which are listed as threatened under the ESA. Higher temperatures in the Russian River may be a source of impairment of these cold water fisheries.

The current deficiencies in the County's implementation of the General Permit and the County's SWMP can cause further impairment of the Russian River for both sedimentation/siltation and increased temperatures, and are alleged to have further degraded the Russian River. The County has no current procedures in place for construction site review or for the inspection and enforcement of control measures. More strict control over construction and land development by the County could decrease the sedimentation/siltation of the Russian River.

REMEDIAL MEASURES REQUESTED

A. ILLICIT DISCHARGE DETECTION AND ELIMINATION

1. Completion of a map of all outfalls to include the identification by name of all waters of the United States that receive discharges from the County's stormwater drain system.
2. Annual dry-weather inspection of the County's stormwater drain system.

B. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL

1. Development and implementation of procedures for construction site plan review.
2. Development and implementation of procedures for inspection and enforcement of control measures.

C. POST-CONSTRUCTION STORMWATER RUNOFF MANAGEMENT

1. Development, implementation and enforcement of a program to address stormwater runoff from new development and redevelopment.
2. Provision of a process to ensure long-term operation and maintenance of all BMPs.

D. POLLUTION PREVENTION/GOOD HOUSEKEEPING

1. Implementation of policies and procedures for the maintenance of County facilities, vehicles and equipment.
2. Establishment of annual staff training for all staff who may be involved with the County's SWMP, County facilities, vehicles, and equipment.

E. PUBLIC PARTICIPATION/INVOLVEMENT

1. Updating and enhancement of the County's stormwater website to include more information as to how to report sewer system overflows, information on how to prevent stormwater runoff at construction and post-construction sites, and copies of the County's SWMP and BMPs.
2. Opening of all stormwater meetings to the public with at least one week's notice posted on the County's website before the meeting occurs.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. The members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the County's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the County for the violations identified in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. If the County wishes to pursue such discussions, it is suggested that a dialog be initiated promptly. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469



Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

